

REMARKS / ARGUMENTS

After entering these amendments, claims 1-3 will be pending. Claims 4 and 5 have been withdrawn.

THE REJECTIONS UNDER 35 U.S.C. § 112:

Claim 3 was rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Applicants traverse.

The Examiner has stated that “[t]he claims contain subject matter ‘selective estrogen receptor modulators, growth hormone secretagogues, progesterone receptor modulators, anti-diabetic agents, anti-hypertensive agents, anti-inflammatory agents, anti-osteoporosis agents, anti-obesity agents, cardiac glycosides, cholesterol lowering agents, anti-depressants, anti-anxiety agents, anabolic agents, and thyroid mimetics’, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention.” (Page 4, February 9, 2005 Office Action).

Applicants have amended Claim 3 to no longer recite -- selective estrogen receptor modulators, growth hormone secretagogues, progesterone receptor modulators, anti-diabetic agents, anti-hypertensive agents, anti-inflammatory agents, anti-osteoporosis agents, anti-obesity agents, cardiac glycosides, cholesterol lowering agents, anti-depressants, anabolic agents and thyroid mimetics.

Further, Claim 3 was rejected under 35 U.S.C. § 112, first paragraph, because the specification, “does not reasonably provide enablement for the instant composition includes an anti-anxiety agent other than diazepam, lorazepam, buspirone, oxazepam and hydroxyzin pamoate.” (Page 5, February 9, 2005 Office Action).

Applicants have amended Claim 3 to recite -- anti-anxiety agents selected from the group consisting of diazepam, lorazepam, buspirone, oxazepam and hydroxyzine pamoate --.

In light of the above amendments to the claims, applicants request the Examiner withdraw the rejections under 35 U.S.C. § 112 as they are now moot.

DOUBLE PATENTING:

Claims 1-3 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of co-pending United States Patent Application Serial No 10/712,456. (Page 9, February 9, 2005 Office Action). Applicants traverse.

Claims 1-3 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 7 of co-pending United States Patent Application Serial No 10/438,722. (Page 11, February 9, 2005 Office Action). Applicants traverse.

Applicants submit herewith a Terminal Disclaimer in compliance with 37 C.F.R. 1.321(c).

In light of the Terminal Disclaimer, applicants request the Examiner withdraw the obviousness-type double patenting rejections as they are now moot.

OBJECTIONS:

Claims 1-3 were objected to as containing non-elected subject matter. Applicants have amended Claim 1, and thereby Claims 2 and 3 which depend from Claim 1, to delete the terms "heteroaryl", "heterocyclo" and "heterocycloalkyl" from variables R₁, R₃, R₅, R_{5'}, R₆ and R_{6'}. Additionally, Applicants have amended Claim 1, and thereby Claims 2 and 3, to delete the term "O" from variable X. Finally, Applicants have amended Claim 1, and thereby Claim 2 and 3, by deleting variable -- n -- as it no longer appears in Formula Ia.


In light of the above amendments to the claims, applicants request the Examiner withdraw the objections to the claims as they are now moot.

CONCLUSION

No fee is believed due for the filing of this Amendment; however, should any fee be found to be due please charge said fee to Deposit Account No. 19-3880 in the name of Bristol-Myers Squibb Company. In view of the foregoing, applicants submit that the application is now in condition for allowance. Early notification of such action is earnestly solicited.

Respectfully submitted,

Bristol-Myers Squibb Company
Patent Department
P.O. Box 4000
Princeton, NJ 08543-4000
(609) 252-6270



Sammy G. Duncan, Jr., Ph.D.
Attorney for Applicants
Reg. No. 46,675

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